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**SOUTH SUDAN**

# SUDAN RURAL LAND GOVERNANCE (SRLG) PROJECT

ENSURING THE INCLUSION OF GENDER AND  
VULNERABLE GROUPS IN LAND REFORM PROCESSES  
IN SOUTH SUDAN: A STRATEGY

JULY 2011, Revised April 2012

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# SUDAN RURAL LAND GOVERNANCE (SRLG) PROJECT

BUILDING A LAND TENURE SYSTEM ON THE  
RULE OF LAW: GENDER AND VULNERABLE  
GROUPS STRATEGY

JULY 2011, Revised April 2012

**DISCLAIMER**

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# ACRONYMS AND ABBREVIATIONS

CLA	County Land Authority
COP	Chief of Party
COTR	Contracting Officer's Technical Representative
DDR	Disarmament, Demobilization and Reintegration
EU	European Union
FARM	Food and Agri-business and Marketing Project
G&VG	Gender and Vulnerable Groups
GOSS	Government of Southern Sudan
IDP	Internally Displaced Person
NGO	Nongovernmental Organization
LCF	Land Coordination Forum
M&E	Monitoring and Evaluation
MAF	Ministry of Agriculture and Forestry
MSI	Management Systems International
NPA	Norwegian People's Aid
NRC	Norwegian Refugee Council
PMP	Performance Monitoring Plan
ROSS	Republic of South Sudan
SPRP	Sudan Property Rights Program
SRLG	Sudan Rural Land Governance
SSLC	Southern Sudan Land Commission
UN	United Nations
WCS	Wildlife Conservation Society

# EXECUTIVE SUMMARY

This report synthesizes the findings of an assessment conducted by the Sudan Rural Land Governance Project (SRLG) in 2011. The assessment set out to explore and document the experiences of women, youth, demobilized soldiers, returnees, and internally displaced persons in accessing and claiming their land rights in the context of the constitutional dispensation and the general law reforms being undertaken in South Sudan. This was done to establish the gaps and weaknesses in the current laws vis-à-vis the strategies and programs of government and relevant stakeholders to uphold the rights of the vulnerable people in relation to land. The experiences of other countries facing similar post-conflict situations as South Sudan suggests that governments often overlook the rights of vulnerable people when it comes to issues of reconstruction and economic development. In an effort to avoid replicating this scenario in South Sudan and instead ensure that the interests of vulnerable groups are included in the reform agenda, this assessment was undertaken by Tetra Tech ARD with support from USAID, and sought to engage the government, members of identified vulnerable groups, international organizations, and other relevant stakeholders in land related issues. The aim was to see how issues affecting the vulnerable could be best addressed in a pragmatic manner to secure their land rights and improve their livelihood opportunities.

The assessment was confined to the SRLG project's pilot states: Central Equatoria, Western Equatoria and Jonglei. The specific locations of focus were Terekeka County (Central Equatoria), Yambio (Western Equatoria) and Bor (Jonglei). Moreover, the consultation targeted all various actors dealing with land and gender issues in relation to the target group. The study population included women, men, actors in the land sector, selected government ministries, traditional court officials, women's groups, and civil society. One hundred and seventy two (172) respondents were interviewed to elicit their views and give an account of their experiences or knowledge on land issues affecting the vulnerable group. The assessment was descriptive and exploratory in nature and followed a consultative and participatory process.

The assessment revealed that gender is a significant factor affecting access, ownership and/or control of land across the categories in all groups. Inequalities in access to and control of land have serious implications on the livelihoods of women, youth, demobilized soldiers, internally displaced persons, and returnees, as well as other vulnerable populations. The assessment also revealed strong cultural and traditional differences related to gender that determine the manner in which land is allocated to men and women, as well as to the other vulnerable groups. Allocation generally favors men and excludes women.

The assessment identified additional factors that deepen vulnerability, including the prolonged civil war, government appropriation of land for development, unlawful occupation of land, including by rebels/militia, illiteracy, and insecure land tenure. These factors have undermined the access to land and livelihoods of vulnerable people, exposing them to poverty and a life of destitution.

The assessment also identified key gaps in existing legislation, including the Transitional Constitution and the Land Act, in addressing land issues with regards to vulnerable populations. The inconsistencies in the existing laws contribute to tensions between statutory and customary laws. These tensions are further fuelled by lack of knowledge of the existence of laws and/or their contents by the majority of the population, and vulnerable groups in particular. In this context, culture and traditional beliefs may act as impediments to successful implementation of progressive legislation that seeks to protect the rights of vulnerable people. Dissemination of and education about these legal frameworks would therefore be an important element of the reform process.

## KEY FINDINGS

Land tenure in South Sudan is governed by both statutory and customary law. While the recognition of customary procedures is important, the intersection between the two has created unique challenges for vulnerable groups, particularly women. Key findings related to gender and vulnerability includes the following:

- Despite incorporation of language to protect women and other vulnerable groups, key legislation governing statutory land tenure still include openings for discrimination;
- Legal provisions protecting customary land practices, and cultural and traditional norms, may create a discriminatory system of land tenure in practice;
- Under a customary land tenure system, women typically do not own any land, but access and use land through their male relatives, generally their husbands. In most communities, women do not inherit land from their fathers or husbands. Without protected access to land, women often lack adequate access to livelihoods and economic independence.

In addition to gender-related vulnerability, a number of factors associated with land vulnerability were identified as relevant in the South Sudanese context, including:

- Socio-economic challenges, including lack of education, lack of knowledge of legal rights, lack of livelihoods opportunities, high poverty, and food insecurity are all characteristic of the vulnerable group, and are directly impacted by lack of secure land tenure;
- Insecurity, both in terms of the historic civil war and recent insecurity caused by armed groups, directly impacts land tenure, particularly for vulnerable populations;
- Vulnerable populations suffer from precarious land rights, including lack of transparent or equitable allocation processes, government appropriation, and challenges in implementation of protections.

## RECOMMENDATIONS

Based on the assessment and findings, SRLG project recommends the following to the Government of South Sudan, civil society, and development partners to address the issues facing the vulnerable group:

- Ensure women's participation in decision-making and governance structures;
- Reform the legislative framework governing land tenure;
- Support formalization of land tenure at community level;
- Support mandatory joint titling for married couples;
- Ratify international conventions on the rights of the vulnerable;
- Conduct public awareness and outreach campaigns;
- Conduct a legal literacy campaign;
- Establish and support the work of legal aid and resource centers;
- Cultivate active participation of communities in land law reform initiatives;
- Involve men in developing solutions;
- Support economic empowerment of vulnerable populations.

In addition, the following are recommendations for the project:

- Support government legal reform;
- Support for legal education campaigns;
- Support for community legal aid;
- Support improvements to land administration system at local level;
- Establish strong partnerships with local communities;
- Promote representation of women and vulnerable groups in land governance structures;



- Promote incorporation of a gender and vulnerability perspective in land administration;
- Collaborate with and support women's groups and other local organizations.

# 1. INTRODUCTION

Vulnerable populations, including women, youth, demobilized soldiers, internally displaced persons (IDPs), and returnees, in South Sudan face many difficulties in accessing or owning land. In some communities, a widow is forced to leave their marital land following the death of her husband; elsewhere, male relatives deny daughters inheritance of family lands. Returning IDPs and refugees often find it difficult to regain access to their lands, which have been illegally occupied by militia, taken by government for development, or sold to unsuspecting new owners. Demobilized soldiers, who often prefer to stay in urban centers or are unable to reintegrate into their rural communities also often find it hard to access land for settlement. These and other issues facing vulnerable populations were highlighted in various consultation workshops conducted by the Sudan Property Rights Program (SPRP) and the Southern Sudan Land Commission (SSLC) with the support of USAID<sup>1</sup> as part of the process of developing a Land Policy for South Sudan. The problems faced by these vulnerable groups are not a new phenomenon facing the Government of South Sudan; these issues have been acknowledged and this is reflected in existing and previous legislation that seek to address the land question.<sup>2</sup> In reality, however, the proclamation of the “people’s rights to land”, as stated in the transitional constitution, does not necessarily result in tangible benefits, particularly for vulnerable groups. Discriminatory practices are rife in land allocation at both community and town levels. Moreover, the process of land allocation is dogged with corruption, and is affected by the attitude and value systems of the community, which themselves may prevent women and other vulnerable populations from accessing or owning land. All of these factors have pushed the vulnerable into further poverty.

The Government of South Sudan has put in place various legislation, policies, and programs to alleviate the problems faced by vulnerable groups in accessing or owning land. Some of the notable legislation includes the Transitional Constitution 2011, the Land Act 2009, and the Local Government Act 2009. With support from USAID in 2010, the SPRP and SSLC developed a Draft Land Policy, which was handed over to the Ministry of Legal Affairs and Constitutional Development in February 2011. When adopted, this policy will deal with issues of land comprehensively.

Despite such measures taken by government, the problems associated with land access for the vulnerable remain unsettled and present serious challenges to the livelihoods of citizens. There is, therefore, a continuing need to engage with the various stakeholders dealing with land issues in South Sudan and develop strategies to help inform policy, interventions, and programs that alleviate the hardships faced by vulnerable groups.

Many studies have been undertaken in South Sudan on the broad issue of land and land rights. These studies have concluded that land is a critical resource for the population and one of the major driving forces of conflict in the country.<sup>3</sup> This assessment aims to build upon this body of work and make a particular

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<sup>1</sup> In 2009, a total of ten consultations were undertaken in all ten states of South Sudan, using a participatory approach. During these consultations, respondents identified issues related to land access and ownership, and gave their views on what a land policy should address. Cross-cutting issues affecting vulnerable groups were also identified including secure land tenure, equal access to land for all, transparency in the process of land allocation, and resettlement of IDPs, demobilized soldiers, and returnees by government.

<sup>2</sup> See the Interim Constitution of South Sudan (2005) and the Transitional Constitution of South Sudan (2011), which put emphasis on the land belonging to the people. The inclusion of this principle in both constitutions is an indication that the government has acknowledged that every South Sudanese (including the vulnerable group in the context of this study) is entitled to own and access land as a matter of right.

<sup>3</sup> See W.E. Akinyi Nzioki Bior and M.O. Odhiambo, Land Tenure Study in Southern Sudan Phase I (SAAR, 2005); N. Thomson, A Review of Customary Land Rights Protections in Southern Kordofan and Blue Nile States (ARD/UASID, 2006); and P. V. De Wit “Land Policy Development in Post Conflict Sudan Dealing with Delicate Balances in A Fluid Environment” (Washington: 14-15 February 2008).

contribution of documenting and understanding the causes of the plight of vulnerable groups -- women, youth, demobilized soldiers, IDPs and returnees -- in accessing or owning land under current circumstances in South Sudan. The assessment also brings out issues that the Government of South Sudan must address to fulfill its mandate of protecting the rights and guaranteeing fundamental freedoms of its citizens, in accordance with internationally accepted standards.

## **1.1 WHY FOCUS ON THE VULNERABLE**

South Sudan's civil war and political upheavals destroyed existing social structures and infrastructure. There were immediate and significant results for the population: the forced migration of refugees who fled to other countries (and would later become "returnees" to South Sudan in the post-war period) and internally displaced persons who moved within the region; the emergence of large numbers of women whose husbands left their families to join the war, and in some cases did not return; and eventually, the demobilization of large numbers of soldiers, whose military services are rendered obsolete as normalcy and peace returned to the region. All of these population groups are vulnerable in the South Sudanese context, where they have suffered social dislocation, economic damage, and trauma that jeopardize their ability to improve their livelihoods in the current transitional period. They often have limited financial resources, as in many cases their assets were destroyed or appropriated by others during the war, while their capacity for present income generation is hindered by their lack of education and skills. Financial means are thus lacking for members of the vulnerable group, by virtue of their social and economic status, and this typically prevents them from being able to afford to buy land – itself a marker of vulnerability in a context where the primary livelihood options are land-based.

South Sudan today is in the period of post-conflict transition and reconstruction. During such periods, governments often give priority to political, military, and economic solutions to existing development and stability challenges, while ignoring or overlooking the plight of the most vulnerable people. Such mistakes can compound problems for the country, when a large portion of the population feels disenfranchised and therefore can easily be ignited to cause civil unrest. It is thus imperative that when reforms are being undertaken, appropriate mechanisms are put in place to address the problems faced by vulnerable groups, particularly related to accessing (or re-accessing) land and shelter, to improve their livelihoods, and be part of the economic development spurred by reconstruction in a positive manner. Land ownership is an indispensable condition for the achievement of a viable livelihood and subsequent family welfare in South Sudan. Anyone without the right to land thus faces a violation of fundamental rights. For this reason, this report focuses on land tenure systems, and specifically the access of the vulnerable to land, in order to ensure that a strategy is developed that supports their active participation in the process of development in South Sudan.

## **1.2 KEY DEFINITIONS**

This study focused on vulnerable groups in order to facilitate development of a strategy that would enable the Government of South Sudan to support and implement practical interventions, programs, policies, and laws that better protect land tenure rights for the vulnerable. The category of "vulnerable group" refers to those who cannot comfortably or safely access resources to meet their basic needs, and includes women, youth, IDPs, returnees, and demobilized soldiers. "Gender" for the purposes of this report connotes the socially constructed roles and traits of women and men; gender dynamics, including issues of resource allocation and power distribution, are examined. "Women" refers to either married or un-married women of marriageable age. The youth refers to both men and women within the age bracket 15-40 years, as informed by youth association membership criterion. Internally displaced persons are those displaced from their place of abode by virtue of the civil war, external invasion, or resource conflicts between warring communities. In the context of South Sudan, and according to Section 4 of the Land Act (2009), "land" is defined as all land-based resources, including urban land, rural land, floodplains, flora, local fishing grounds, and lands under

which subterranean resources exist (but not subterranean resources themselves).<sup>4</sup> Land tenure refers to the process through which land ownership or rights to land are organized, as determined by statute, agreed precedents, or the customary practices of communities within a given boundary.

### **1.3 STUDY SITE**

The scope of the assessment involved only the SRLG project's pilot states: Central Equatoria, Western Equatoria, and Jonglei. The specific locations of focus were Terekeka County (Central Equatoria), Yambio (Western Equatoria), and Bor (Jonglei).

### **1.4 STUDY DESIGN AND POPULATION**

The aim of this rapid situational assessment and ethnographic enquiry was to assess the status and effect of the existing land tenure system on women, youth, demobilized soldiers, returnees and IDPs, in terms of access to, control of, and ownership of land and other resources in the selected areas. The assessment used a participatory approach and was descriptive and exploratory in design. It was consultative and inclusive of the various actors dealing with land and gender issues in relation to the target group. The study population therefore included women, men, actors in the land sector, selected government ministry officials, traditional court officials, women groups, and civil society representatives. A total of 172 respondents were interviewed to elicit their views, experiences and knowledge relating to land issues affecting the vulnerable group.

### **1.5 METHODOLOGICAL FRAMEWORK**

#### **1.5.1 Methodology**

The methodology adopted for the assessment was gendered land analysis (GLA). Global Land Network launched GLA as a tool for assessing challenges to land rights and identifying informed and equitable response options<sup>5</sup>. It is a form of local vulnerability mapping whereby areas of a local territory are classified according to the tenure situation including the gender dimensions. It serves to identify the most precarious land rights and the frontiers of development affecting women and through this process, prepares the ground for better informed decisions and interventions.<sup>6</sup> Given the complexity of the land issue in South Sudan as a result of the diverse interests involved, an approach like the GLA was necessary to explore and deepen the understanding of the pattern of rights, stakeholders and governance involved, with a view to identifying practical policy recommendations that meet the people's needs.

Through this approach, a mapping of the vulnerability of women and other groups (youth, returnees, IDPs, and demobilized soldiers) was undertaken based on information received from the target groups themselves. They were able to identify collectively the challenges they face and what they want done to overcome them. The assessment methodology included interviews with members of the target groups, as well as other relevant stakeholders such as government officials, non-governmental organization (NGO) staff, religious leaders, community leaders, and international organization staff to collate their views on how best the land issues affecting women and other vulnerable groups should be addressed. It was thus a participatory and inclusive process.

#### **1.5.2 Methods**

The study used the following methods to source information during the assessment:

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<sup>4</sup> See section 4 of the Land Act (2009) for interpretations of terms.

<sup>5</sup> K. Haldrup, "Up Scaling Strategies for Strengthening of Women's Land Rights", 2008. Information Federation of Surveyors, 4 July 2011 <[www.fig.net/pub/fig2008/papers](http://www.fig.net/pub/fig2008/papers)>.

<sup>6</sup> Ibid.

**Survey Questionnaires:** A survey questionnaire was developed and used to source information from respondents. The tool captured basic demographic information and asked questions to gauge and capture respondents' knowledge, perception, and recommendations for ensuring that women and other vulnerable groups have access to land and are participants in the land reform agenda as citizens of South Sudan.

**Literature Review:** Primary and secondary data were used. Both local and international publications related to the study subject, including broader analyses of the land question in South Sudan and specifically literature on issues focused on women, IDPs, returnees, and other vulnerable groups were reviewed as background information. From the literature review, gaps were identified which inform final recommendations contained in this assessment report for further action. Legislation governing land in the country was also analyzed with the aim of ascertaining the position of men and women in relation to access to and ownership of land in the selected regions. A further examination of the statutes was undertaken to examine or explore how they either enhance or limit access to land for vulnerable groups, such as IDPs, returnees and demobilized soldiers.

**Key Informant Interviews:** The assessment identified key informants from different institutions, both government and non-governmental, involved in issues of land, women, IDPs and returnees. At the government level, key informant interviews were conducted with officials from the Ministry of Gender, Child, and Social Welfare, the Ministry of Legal Affairs and Constitutional Development, the South Sudan Land Commission, and the South Sudan Relief and Rehabilitation Commission. Interviews were also conducted with governors at the state level, local Chiefs, members of the Council of Elders, Payam Administrators, members of the Women Union, representatives of IDP communities, members of the South Sudan Law Society, and officials from Norwegian Peoples Aid, among others. These key informant interviewees were chosen by virtue of their knowledge and experience in dealing or interacting with land issues generally, or land issues specifically related to women and other vulnerable groups in South Sudan.

**In-depth Interviews:** In-depth interviews were also carried out with women, members of the Council of Elders, IDPs and returnees. These interviews helped to determine the gaps between legal provisions and actual practices on the ground, as experienced by respondents. It also provided useful entry points for making practical recommendations based on peoples lived realities, experiences, and need from an informed perspective.

**Focus Group Discussions:** Focus group discussions were also used to interview groups of respondents. This made it possible to reach many people within a short time. Focus group discussions were conducted with groups of community leaders, IDPs, returnees, women, and youths.

## 1.6 DATA ANALYSIS

The specific process of data analysis used in this assessment was based on the grounded theory approach to qualitative research. In line with this approach, data analysis was undertaken simultaneously with data collection. Following the interview process, field notes were transcribed and reviewed, and key elements and emerging themes or issues from each interview were identified. This process led to identification of common themes, which informed the design and presentation of the findings of this survey in this report.

## 1.7 LIMITATIONS OF THE STUDY

There were problems encountered in the course of the assessment. Individual respondents were not always willing to give information freely or appeared non-committal in their responses. This is attributed to land being a sensitive issue in the targeted communities and in South Sudan in general.

There were also challenges with collecting information from relevant institutions. There was reluctance within some institutions to share documentation on land or other essential data, possibly also because of the sensitivity of the subject. Where institutions were willing to share information, organizational bureaucracy sometimes made it difficult to gain access to available data.

The timing of the survey also presented challenges. Research was conducted at the time of grand preparations for the celebration of South Sudan's independence, so many officials from government were overwhelmed with these activities and getting time to talk to them was difficult. Interviews often had to be rescheduled as a result of conflicting priorities.

The challenging environment in South Sudan also presented challenges. Some planned interviews were cancelled due to logistical problems associated with the weather and terrain.

Despite these limitations, significant data was collected and was sufficient to accomplish the specific aims of the study.

# 2. STATUTORY LAND TENURE

## 2.1 THE TRANSITIONAL CONSTITUTION 2011

The Transitional Constitution of South Sudan, adopted in 2011, provides for the rights of all citizens. Section 14 provides for equality before the law and entitlement to protection for all citizens without discrimination, based on race, ethnic origin, sex, or social status, among other categories.

Section 28 of the Transitional Constitution specifically guarantees citizens the right to acquire and own property as regulated by law, and protects private property from arbitrary confiscation. Section 16 of the Transitional Constitution is dedicated to the protection and promotion of women's fundamental rights, and specifically provides that women shall have the right to own property and share in the estate of their deceased husband, together with the surviving legal heir of the deceased.

A literal interpretation of these clauses taken together suggests sweeping protections for women in terms of their property rights. However, these provisions are tempered by section 33 of the Constitution, which recognizes the rights of the diverse ethnic and cultural communities of South Sudan in the following way: "Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures. Members of such communities shall have the right to practice their beliefs, use their language, observe their religions and raise their children within the context of their respective cultures and customs in accordance with the Constitution." While intended to cement the respect of cultural norms, this clause can be used by communities to deny women their rights under the constitution and avoid their obligation to respect and enforce the law by invoking local tradition and cultural practices. In order to address this conflict, the government must refine and amend this section to specifically clarify that traditions and culture shall not override the legal rights and entitlements conferred by other sections of the constitution.

It is also worth noting that a significant omission of the Transitional Constitution with regards to land issues is its lack of a provision for the restitution of land rights. Inclusion of such a provision would have been important in meeting the needs of all vulnerable groups.

Also linked to land rights, Section 34 of the Constitution deals specifically with housing. It guarantees all citizens of South Sudan the right to access decent housing and prohibits unlawful evictions. While another example of de jure protection, in practice, the application of this provision has been limited. In Juba, for instance, the authorities have evicted slum dwellers to pave way for development, sometimes without compensation or provision of alternative sites for settlement. A discussion with one government official confirmed that women who have small sheds in the marketplace are sometimes subject to demolitions without notice, in contravention of the law and with the result of lost livelihoods.<sup>7</sup> There is, therefore, a clear need for the government to enforce both the spirit and letter of the law to protect all citizens.

## 2.2 LOCAL GOVERNMENT ACT 2009

In 2009, the Government of South Sudan passed the Local Government Act, which provided for establishment and defines the functions, duties, and responsibilities of local governments.

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<sup>7</sup> Interview on 28 June 2011 with the Under Secretary and the Director Planning at the Ministry of Gender, Child, and Social Welfare.

The Local Government Act has direct bearing on the statutory rights of women, and the land tenure system and place of women within it in South Sudan. On the one hand, the document establishes a number of principles related to gender equality. Section 110 of the Local Government Act enumerates the rights of women, including recognition of full and equal dignity for women, and protection of participation women's in public life. The Act reiterates the need for greater inclusion of women in the public sphere, through requirements that women account for 25% of members of local government bodies, such as legislative and customary law councils. Unlike the Transitional Constitution, the Act also explicitly requires that local government councils "enact legislations to combat harmful customs and traditions which undermine the dignity and status of women".<sup>8</sup>

On the other hand, the Act also discusses government responsibilities in land usage, allocation, and administration. Regulation of the land tenure system, usage and exercise of rights in land is established as a concurrent power, held by the Government of South Sudan, state governments, and local governments, while land administration is the responsibility of local government only.<sup>9</sup>

In line with its general protections for equal rights for women, the Local Government Act also guarantees women the right to own property and share in the estate of their deceased husband together with the surviving legal heirs of the deceased.<sup>10</sup>

## **2.3 LAND ACT 2009**

Although the division of power among government bodies related to land, and the general right of women to own property, is established in the Local Government Act, the Land Act, also adopted in 2009, is the primary legislation governing the land tenure system in South Sudan.

The principal purpose of the Land Act is to regulate land tenure and protect rights in land, while also creating an enabling environment for economic development in South Sudan. It has broad objectives, but the most important elements for the purposes of this report are those described in section 5, which includes the following: (a) government role in resolving land disputes; (b) the guarantee of equal rights in acquiring or owning land for all people; (c) the recognition of customary rights in land acquisition, in line with the constitution; (d) the establishment of a land administrative system through a participatory process; and (f) provisions for facilitation of the reintegration and resettlement of internally displaced persons, among others. These provisions aim at addressing land access and ownership issues that affect vulnerable population groups, including women.

Section 7 of the Land Act vests the ownership of land in the South Sudanese people, but mandates government to regulate the land on behalf of the people. Experience from neighboring countries such as Kenya highlights the challenges that arise when authority over land allocation rests with established institutions. Such institutions are often run by elites whose interests do not necessarily correspond with the concerns of vulnerable groups. In such cases, allocations are often skewed in favor of men who are also politically connected or economically powerful and can influence the process. Vulnerable groups, including women, typically cannot influence the process because of their social, cultural, and economic class and are therefore largely locked out. Given these dynamics, the principle of land "belonging to the people" must be supported by significant, strong laws and processes that actively protect vulnerable groups.

Section 13 spells out the right of citizens to land and clearly states that no one shall be denied the right to own land by the Government of South Sudan based on sex, ethnicity, or religion. This is protective of all citizens but requires protection mechanisms for it to have a meaningful impact for women and other vulnerable groups.

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<sup>8</sup> See Section 110 (iv-b) of the Local Government Act (2009).

<sup>9</sup> Section 24 (c) of the Local Government Act (2009).

<sup>10</sup> Section 110 (iv) of the Local Government Act (2009).



Women's land rights are provided for under section 13(4), which mirrors the Local Government Act in protecting the right of women to own and inherit land together with any surviving legal heirs of the deceased, in line with the Constitution. While this section offers a modicum of protection for women, there is no clarity as to who the other surviving heirs are. There is need to refine this section with clarity to avoid ambiguity and ensure that there is no room for otherwise ineligible persons being ordained heirs by custom for the purposes of inheritance.

Like the Transitional Constitution, the Land Act includes clauses that create challenging balancing acts between the rights of women and customary practices. Under Section 6 (4), the Act imports cultural land rights into the substantive elements of the Act, and establishes the protection of the customary land tenure system. It establishes that all lands traditionally and historically held or used by local communities or their members shall be defined, held, managed, and protected by law in South Sudan. Such a clause is necessary given that nearly 75% of land in South Sudan is customary land.<sup>11</sup> It also states that land rights provided under customary tenure are protected, irrespective of whether or not interest is held individually or in association with others.<sup>12</sup> These provisions present challenges to women, as their rights to land are not always recognized under the customary land tenure system. Given this, women will continue to face discrimination in inheriting or controlling and owning land until these provisions are qualified to guarantee women land rights on equal footing with men.

The Land Act is laudable for creating land authorities at the county<sup>13</sup> and payam<sup>14</sup> levels, with functions including administering and managing land at the two different levels. It also clearly spells out the composition of membership of the land authorities. In doing so, it has sought to establish space for women, requiring that one out of six members of the land councils be women.<sup>15</sup> While this is positive, it is below the 25% threshold for women's participation in such bodies as envisaged in the Constitution. There is therefore need for a more gender balance in the composition of land authorities at each level of administration. It should be more clearly required that gender considerations be taken into account in the appointment of members to these authorities and that 25% of the members must be women. This is important for mainstreaming women's issues and voices on matters affecting them in relation to land.

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<sup>11</sup> See Thomson, 2006. Also, this study found that land in South Sudan is largely managed under customary land tenure. Demarcation is a new process and is more evident in urban areas where government has introduced registration of land. People are now applying to get land and be officially registered owners following due process.

<sup>12</sup> See section 8(3), & (4) of the Land Act (2009), which not only provides for customary tenure but protects those who hold rights in land under that tenure.

<sup>13</sup> Section 44 of the Land Act (2009).

<sup>14</sup> Section 47 of the Land Act of (2009).

<sup>15</sup> See section 45 of the Land Act (2009) for composition of membership of the County Land Authority, and Section 48 for the Payam Land Authority.

# 3. GENDER, VULNERABILITY, AND CUSTOMARY LAND TENURE

Among the various vulnerable groups in South Sudan, women are in a particularly tenuous position in terms of land rights because of cultural traditions and norms surrounding land. Despite the incorporation of language to protect women, key legislation governing statutory land tenure still includes openings for discrimination on the basis of the customary system. Provisions within the relevant legal documents protecting and maintaining the customary land tenure system, and cultural and traditional norms in general, in many ways create a discriminatory system of land tenure in practice.

During this assessment, field researchers interviewed both men and women from various backgrounds in the SRLG pilot states to understand practices and views relating to land tenure. Three predominant communities in three states in South Sudan were purposively identified and sampled for interviews. These were the Azande in Yambio, Western Equatoria state; the Dinka Bor in Bor, Jonglei state; and the Mundari in Terekeka, Central Equatoria state. In all of the communities visited, there is a very strong cultural inclination towards local (community-level) land administration and tenure. Land is understood to belong to the community, and the community regulates how land is accessed by members through customary practices. Specifically, land belongs to the clan as a whole, and its ownership is vested in the male head of the family. A review of the impact of the customary norms of land access and ownership on women in particular reveals the challenges of reconciling the statutory protections discussed above with the reality in many communities.

In general, women typically do not own any land, but access and use land through their male relatives, generally their husbands. According to Mundari culture, only sons inherit land. Mundari wives, however, can inherit through their sons, but any land is registered in the son's name, even if the son is a minor. For the Azande, on the other hand, wives do not inherit through their sons and have very limited inheritance possibilities.

Among the Mundari, a woman's inheritance is pegged on birthing children, particularly sons. Widows are seen as stewards of land for their sons, and are therefore limited in what they can do with inherited land. Inheritance is fundamentally meant to ensure the continuation of the patrilineal system in the community. Women who are childless are in precarious situation among the Mundari people. Indeed, because of the large number of cows paid by to a woman's family as a "bride price" or dowry, wives themselves are viewed as a resource upon marriage. In return for the significant resources spent on her, a woman is expected to repay her husband by birthing and raising many children.<sup>16</sup> Barren widows cannot or have limited control over land; and her continued stay on land is dependent upon her relationship with her in-laws. Often, a widow is sent away as she is seen as a loss to the husband's family, as expressed by one respondent: "A barren wife or

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<sup>16</sup> Interview with members of Mundari Youth Association for Reconstruction and Development in Terekeka on 21 June 2011.

widow is useless; she is a loss to her husband's family, a lot of cows having been spent to pay bride wealth with no returns from her; she does not deserve to stay in family land upon her husband's death".<sup>17</sup>

It is possible but uncommon for Mundari women to purchase land. Purchase of land in Mundari communities depends on economic power; cost is the primary barrier for land purchase. Women are therefore greatly disadvantaged, as they typically do not have economic power of their own. Women who can afford to do so, however, and are lucky enough to be included in the list for land allocation of urban plots, can successfully buy land, as intimated by the respondents. The Director of Planning at the Ministry of Gender, Child, and Social Welfare supported this assertion, explaining that anyone who can afford to buy land could do so at the county level.<sup>18</sup> However, even if a woman buys land, if she is married, she surrenders it to her husband, who in turn can pass it to a co-wife.<sup>19</sup> A respondent in a women's group in Terekeka confirmed that she bought land from the county authority, but her husband claimed it, because as a married woman her possessions and assets belong to her husband and land is widely perceived to belong to men<sup>20</sup>. Her husband therefore took control of her land and gave it to a co-wife, for cultivation to feed their children.

Within the Dinka Bor culture, a home "belongs" to the woman of the household, not as owner but as manager; women are thus considered ceremonial owners of land because they manage the home.<sup>21</sup> They cannot, however, own land in their own name. They have user rights to land, but what is grown and harvested from land is vested in the male head of household, in line with his authority, which covers not only the ownership of land, but also all that grows from it.<sup>22</sup>

In line with these cultural norms, Dinka widows have no rights to land. When a husband dies, his land is passed onto to his family. In such instances, his elder brother becomes the custodian of the remaining family members, including his widow and children, and all property.<sup>23</sup>

Among the Azande of Western Equatoria, women also have no rights to own or inherit land. Something unique among the Azande, however, is that following the death of the husband, a widow must leave her husband's homestead empty-handed.<sup>24</sup> The Payam Administrator in Yambio confirmed this assertion in the following terms:

"Women cannot inherit land from their husband. If the husband dies, she must leave, as she cannot stay in the same compound where the husband has been buried. She has to go back to parents, but her children inherit her husband's land. If a woman remains in the husband's home after burial, she must be built for in a different land, not where she shared with her husband. She cannot see the grave or pass near it, and must give up everything she shared with her husband, including her own clothes. The common occurrence is that widows go back to their parents' home immediately [after] the husband dies. There is no widow inheritance among the Azandes. If a wife dies she cannot be buried by her husband, her remains are taken, and buried in her natal home".<sup>25</sup>

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<sup>17</sup> Ibid.

<sup>18</sup> Interview with the Director of Planning Ministry of Gender, Child and Social Welfare on 28 June 2011, Juba.

<sup>19</sup> Marriage to multiple wives is culturally acceptable and common.

<sup>20</sup> Interview with a group of women in Terekeka on 22 June 2011. In this group, there was a barren woman who bought land. Her husband then took this land and gave it to a different wife who bore children for him. The wife that had purchased the land did not resist, as said the other wife needed the land to feed her children. She has since gone back to her father, but she is not divorced since among the Mundari, only men can initiate divorce.

<sup>21</sup> Interview with a member of Dinka Bor from Aim Independent Media on 24 June 2011, Juba.

<sup>22</sup> Ibid. During the interview the respondent elaborated what happens within the Dinka Bor community. He explained women are responsible for all cultivation or agriculture-based activities, but their responsibility ends when the crops are ready. A woman has no control over what she produces, as the men take responsibility and control of the harvest once it is ready. A woman cannot sell any part of the produce unless she has consulted her husband and been given consent.

<sup>23</sup> Interview with a member of Dinka Bor on 24 June 2011, Juba.

<sup>24</sup> Interview with members of the Women Resource Centre on 23 June 2011, Yambio.

<sup>25</sup> Interview with the Yambio Payam Administrator on 23 June 2011.

This is a different practice from the other communities visited during the assessment, as both the Dinka Bor and Mundari allow their widows to stay in their marital community and be “inherited” by their deceased husband’s brother, together with any children and property. This process allows a widow the right to stay on the land and cultivate, ensuring a livelihood, and in some cases the possibility of later inheriting the land through a son. Because Azande women are not able to inherit access to land through their sons and do not inherit from their fathers, the Azande tradition of widows returning to their natal lands creates a double jeopardy for women, who thus lack the right to own or access land following the death of both husband and father.

It is important to note that there is flexibility within the Azande community regarding customs governing a widow’s return to her natal home following the death of her husband.<sup>26</sup> For instance, some couples establish agreements about what should happen should either of them pass away. If the husband states that his wife should remain on his land upon his death, then the widow will be allowed to remain and use the land (but not own it). Respondents accounted for this by noting the Azande respect for the last wishes of a deceased person. An example of such an agreement was shared by one of the respondents, a deacon, who upon marriage made an agreement with his wife that ensured that should she die, her remains would be buried on her husband’s land (rather than taken to her natal home), and should the husband die first, the wife would remain on his land.<sup>27</sup> When the wife died two years ago, her remains were buried at her husband’s home, according to their wishes.

In sum, it is clear that the import of traditional customs and belief into the land tenure system presents difficulties for women. In general, the customary land tenure system excludes women, whether as wives, daughters, and widows, from inheriting land. In doing so, this system prevents women from undertaking meaningful economic development and having secure livelihoods, creating an additional level of vulnerability. The reality of land tenure practice found in the three surveyed communities demonstrates that the statutory protections for women are often overwhelmed by the customs and traditional views governing land rights. Actual rights to access, control, and own land are negotiated at the intersection of a plurality of sources of regulatory norms for women, as well as other vulnerable groups. Therefore, reform efforts must work at both levels and combine various approaches to create legitimacy for the rights of the vulnerable within the land tenure system.

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<sup>26</sup> Interview with members of Evangelical Church of Sudan on 24 June 2011, Yambio.

<sup>27</sup> Interview with Deacon of Evangelical Church of Sudan on 24 June 2011, Yambio.

# 4. OTHER FACTORS RELATED TO LAND VULNERABILITY

Together with women, all members of the broader vulnerable group including youth, demobilized soldiers, and IDPs/returnees suffer challenges in accessing and owning land in South Sudan. A number of specific factors have been identified in the South Sudanese context that cause or contribute to vulnerability vis-à-vis land and are discussed here.

## 4.1 SOCIO-ECONOMIC CHALLENGES

### 4.1.1 Lack of Education

Limited access to education is a major factor leading to vulnerability in general in South Sudan. The civil war ravaged the country and hindered access to formal education for many. Female youths who were often married at an early age were typically cut them off from educational opportunities. One woman interviewed reported that she was not able to move beyond primary school, as there was no permanent school infrastructure in her community and she was married at an early age.<sup>28</sup> Such a situation is very common; many women thus lack requisite education and skills for well-paying jobs, placing them within the most vulnerable group.

Among demobilized soldiers the situation is not very different. Many demobilized soldiers joined the movement for Southern liberation as young boys, and were thereby deprived of education in their youth. Now, if reintegrated into the society, they lack technical skills to successfully pursue livelihoods and generate income.<sup>29</sup>

Even at present, education presents a challenge for South Sudan. There are few schools, and the dropout rate for both girls and boys is very high.<sup>30</sup>

### 4.1.2 Lack of Knowledge of Legal Rights

Directly related to lack of education, many vulnerable people in South Sudan are not aware of the Constitutional and Land Act provisions regarding equal rights for all for land ownership, and inheritance and ownership rights between men and women. Many community members interviewed during the study expressed this:

“We are not aware of the Constitutional provision on equal inheritance rights for men and women. We are hearing from you for the first time today. We are not sure if these rights will be implemented

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<sup>28</sup> Interview on 1 July 2011 with the Chairperson of the Central Equatoria General Women’s Association, Juba; also corroborated during an interview on 30 June 2011 with the Director General of the Ministry of Gender, Child, and Social Welfare in Juba, where she emphasized the challenges women face in accessing education in South Sudan compared to men.

<sup>29</sup> Interview on 30 June 2011 with Officials from the Sudan Youth Christian Ministry International.

<sup>30</sup> Interviews on 30 June 2011 with the Director General and Under-Secretary of Ministry of Gender, Child, and Social Welfare, where both officials indicated that lack of education is a key challenge for women in South Sudan.

by the government if we are not aware about them. Women are always taken as second class citizens. They are taking away what women own, where are the rights? Women's groups land (plot) in the county was taken forcefully and given to a man and we have not been compensated by anyone. There is no one who can sensitize us about constitution".<sup>31</sup>

Even for individuals that are aware of the provisions, their vulnerable status often precludes them from taking advantage of the protections: for example, women are often unable to assert their rights because of the prevailing patriarchal norms that intimidate them. Vulnerable individuals also often lack the knowledge and information of the facilities or institutions available to report the violations and seek restitution.

An interview with the Chairperson of the Central Equatoria Women's Association highlighted this, as she reported that because of illiteracy and lack of opportunity, most women were unaware of many of their legal rights, including those related to land.<sup>32</sup>

### **4.1.3 Limited Access to Livelihoods**

There is a strikingly limited availability of livelihood opportunities for all members of the vulnerable group. As noted earlier, populations identified here as vulnerable typically lacked educational opportunities for a number of reasons related to the long conflict in South Sudan and therefore lack technical skills that would make them strong candidates for employment.

Furthermore, since most livelihood opportunities are tied to the land, many of the most vulnerable are particularly disadvantaged in terms of their access to opportunities. For those living in IDP camps, they are unable to engage in agricultural activities because of the limited land provided in the camp areas, and their lack of agricultural inputs, such as seeds and tools. Returnees in some cases face a similar dilemma when they are unable to access their familial lands. Instead, they may settle in peri-urban areas where they will struggle to get viable work without the requisite skills. The same is true for demobilized soldiers, who also face the additional challenge of often returning from war to find no support systems remaining. Finally, women face challenges to their ability to access livelihoods when they are prevented from accessing their land after becoming widowed, or divorced.

### **4.1.4 Food Insecurity**

Food insecurity is a major threat for most people with insecure land tenure. Regardless of the cause, lack of access or restricted access to land in South Sudan is, for most people, directly linked to the ability of individuals to cultivate food for themselves and their families. In parts of Jonglei, for example, conflicts within communities arising over grazing land rights have resulted in displacement and disruptions to subsistence farmers, as revealed by local officials: "We are addressing complex land issues in Jonglei. For instance among community land belong to the community. We have problems or conflicts from within the community arising from grazing land and water points and trying to find amicable solutions. The communities rely heavily on subsistence farming, any disruptions in the cultivation patterns automatically mean inadequate or no food for the communities".<sup>33</sup> Similarly, in Gangura Payam, Western Equatoria, people generally face food insecurity because of insecurity caused by rebels, who prevent access to land and crops. Without access to their land, people in such communities have severely limited access to food and are often forced to rely on food distributions by either NGOs or UN agencies for survival.

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<sup>31</sup>Interview on 23 July 2011 with members of the Women Resource Centre in Yambio.

<sup>32</sup> Interview on 1 July 2011 with the Chairperson of the Central Equatoria Women's Association, who said that she was aware of the laws and international instruments like CEDAW that protect women as a result of attending workshops, which the majority of women in South Sudan have not been privileged to attend. Most women are illiterate and are unaware of their legal rights. They cannot therefore explore them to their advantage, both because of their own lack of awareness and because of the environment in which they operate, where culture and traditions take precedence in favor of men.

<sup>33</sup>Telephone interview on 30 June 2011 with the Chairman of the Land and Investment Commission for Jonglei State, during which he indicated that internal conflicts have seen people abandon their land and seek shelter in urban areas because of insecurity.

#### **4.1.5 High Levels of Poverty**

The high level of poverty among the most vulnerable groups in South Sudan is linked to declining livelihood options, restricted access to land, and limited educational opportunities. High poverty levels are both affected by lack of access to land, and a cause of lack of access. Many vulnerable individuals, including widowed women, returnees unable to access their ancestral lands, and demobilized soldiers, are only able to access land through direct purchase. Their high poverty levels, however, prevent them from being able to do so. At the same time, because members of the vulnerable group have limited or no education, as described above, they frequently have limited options for employment or means to earn a living, and are therefore reliant on their ability to farm for subsistence. Particularly in agrarian and pastoralist areas, access to land is thus an important buffer against poverty, which the most vulnerable often lack. This problem of land inaccessibility makes it difficult for vulnerable populations to participate meaningfully in development, and develop sustainable livelihoods.

#### **4.1.6 Reintegration Challenges for Returnees and Demobilized Soldiers**

Returnees, both civilians and demobilized soldiers, often face challenges, including animosity and suspicion from community members that complicate the process of reintegration.

Animosity towards returnees in South Sudan has often depended on where the returnee has come from. Those displaced within East Africa face less resentment than those returning from Khartoum. Southern Sudanese who spent time in north Sudan are treated with suspicion, and find that many people within their communities do not want to identify with them. As one respondent confirmed, “IDPs/returnees are being reintegrated into community. However community has reservations for those IDPs/returnees from Khartoum, they are seen as traitors and not supporting the cause liberation, thus not treated kindly like others”.<sup>34</sup> Such prejudice can impact the assistance that returnees receive from community members as well as local government. This can have further repercussions when returnees seek to re-access former lands, particularly if others have settled on them.

Demobilized soldiers often face similar suspicion, compounded by their own challenges in adjusting to civilian life. This is particularly difficult for those without basic education, and those who were injured during combat. Demobilized soldiers often find no financial support available from government.<sup>35</sup>

#### **4.1.7 Lack of Access to and Support from Government**

Vulnerable populations broadly complain of inadequate access to government, and lack of support from government in addressing issues affecting their groups. Youth, displaced populations, women, and demobilized soldiers all report feeling isolated, unconsidered by local authorities, and not given equal chances to be involved in decision-making, policy development, or civic participation.

Youth interviewed argued that while the Constitution provides for equal opportunities for all and development for youth, in reality, youths are excluded from government activities. They are not involved in development of policies or reform initiatives and their voices are therefore absent in governance structures, resulting decisions affecting them made without their input.

This lack of support extends to land-related issues affecting the vulnerable. IDPs report feeling isolated and abandoned by the government, and argue that the government does not address the issues of inadequate land allocated and poor services and facilities. Furthermore, returnees and demobilized soldiers report inadequate

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<sup>34</sup> Interview with respondent at SSLC offices on 28 June 2011, Juba.

<sup>35</sup> Interview on 22 June 2011 with members of a women’s self-help group in Terekeka, where demobilized female soldiers expressed their frustrations. They said they never received any rewards as liberators; all they received was an Identity Card from the government. See also interviews on 29 June 2011 with officials from Sudan Christian Youth Ministry International, where demobilized youth soldiers expressed the same discontent.

support for the challenging process of reintegration into their home communities. Returnees or demobilized soldiers often return and find that they cannot access their former lands, and cannot purchase land easily because of financial constraints. Unfortunately, many report that the government does not have adequate special programs to cushion the reintegration of returnees or demobilized soldiers.<sup>36</sup> Most available support comes from international NGOs and UN agencies.<sup>37</sup> In Terekeka, for example, returnees are receiving support from ACROSS, an international NGO that helps by providing shelter for the returnees. UNHCR also provides support. However, local officials interviewed in Terekeka confirmed that returnees could be resettled only on temporary shelters; they are responsible for finding land to settle permanently on their own. This assertion highlights the limited support available for these vulnerable groups from the government, in terms of dealing with related land issues and reintegration.

## **4.2 INSECURITY**

### **4.2.1 Civil War**

The historic civil war exposed all categories of the vulnerable group to danger and risk, and resulted in particular land vulnerabilities. In many ways, however, women were particularly affected by the conflict in terms of their vulnerability. Many women were left widows by the war, because their husbands left to fight in the liberation movement. As discussed previously, widows are uniquely vulnerable in the South Sudanese context, because of their lack of access to land and livelihoods. In some cases, women fled their rural homes during the conflict, and have since found it difficult to return to their land as widows, because traditionally they lack land rights except through their husbands. In the absence of a husband, the land reverts to the deceased's family; a widow's ability to access the land therefore directly depends on her relationship with the family, which may vary, particularly in cases where the family was separated because of the conflict.

Interviews conducted revealed that many such women currently living in Juba have not been considered for any allocation of land by government or given any kind of compensation despite the burden they are carrying as single heads of households. Most of these widows are not financially stable and cannot afford to buy land at county level on which to settle with their children. Thus, they are in the uniquely challenging position of being unable to purchase land, because of the high cost, and unable to access family land, because of the deaths of their husbands and separation from his family.

Today's youths are also in a tenuous position as a result of the war, which deprived many of early freedoms and opportunities. In some cases, youths were enlisted as child soldiers; in others, those who did not join the war themselves, were often forced to flee their homes, or remained in areas where much of the existing infrastructure and social systems were destroyed. Each of these war-related consequences led to today's situation, where many older youths have not attended school and pursued education. Lacking basic education, many are not gainfully employed or in a position to do technical work needed to earn a livelihood. They therefore are unable to afford to buy land, particularly in urban areas where many wish to return because of greater livelihoods opportunities, but where land prices are typically higher.

### **4.2.2 Unlawful Occupation of Land during the War**

Many people fled South Sudan as refugees during the long-running conflict, often settling in neighboring countries in East Africa or in northern Sudan, in Khartoum. These Southerners have lived outside South Sudan for many years, and the majority began returning only during the last few years, with a surge around the referendum and independence in 2011.

Many such returnees have reportedly found their land, or that of their parents, sold by community leaders or chiefs to other people, who are now in occupation of land. These returnees therefore have no place to settle. In Yambio, for instance, the Payam Administrator revealed that there are many disputes arising from such

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<sup>36</sup> Interview on 21 June 2011 with the Executive Director of Terekeka County.

<sup>37</sup> Interview on 21 June 2011 with the Secretary of the South Sudan Humanitarian and Rehabilitation Commission in Terekeka.



incidences. She explained, “I deal with some land disputes cases but mostly concerning returnees. Returnees come to complain that their land was sold to other people upon return and have no place to go to same having been occupied by strangers who are not from the family lineage.”<sup>38</sup>

The payam administrator singled out “headmen” of the clan or relatives of the returnees as the culprits of most land sales during the conflict, while the owners were in exile. If it is established that the headman or a relative sold land, restitution can be ordered by the chief and a panel authorized by him. Such a body can order that the seller give alternative land to the displaced returnee. Alternatively, “Sometimes the returnees insist on getting back on the land and not accepting alternative plots in such cases we order the relative or headman who sold the land to give compensation to the to the person who bought the land”.

Such unlawful land occupations have put returnees at risk, forcing some to live as squatters themselves as they wait for plots to be surrendered back to them or for alternative land to be allocated to them. Getting alternative land is not always easy in areas where the population has grown and available land is limited.

### **4.2.3 Attacks by Armed Groups**

South Sudan has porous borders with its neighbors, and in some cases, remote areas near these borders are densely forested areas lacking government reach and providing a haven for rebels and armed militia to thrive. In Gangura, in Yambio County, Western Equatoria state, IDP camps have been established because of frequent attacks by the Lord’s Resistance Army (LRA), originally from Uganda and currently operating out of the Democratic Republic of Congo. People in this region have left their land because of the frequency and severity of attacks during which residents are sometimes abducted, maimed, and/or killed. The displaced communities in these areas are predominantly dependent on farming; their displacement thus directly affects their ability to access livelihoods, as they are unable to engage in farming activities in the camp areas, because the land allocated for them is limited. In Gangura, the attackers have harvested what the community had already planted, leaving the IDPs no food to eat or sell. This example is indicative of how attacks by armed groups like the LRA leave rural communities more vulnerable, particularly in the case of IDPs that are denied access to their land for cultivation as a result of the insecurity.

Despite the continued insecurity in areas affected by activities of armed groups, there is often significant pressure on IDPs families to return to their land specifically because of this issue of food security and the reliance of communities on access to land for farming.

## **4.3 PRECARIOUS LAND RIGHTS**

### **4.3.1 Inconsistent or Discriminatory Land Allocation Practices**

By law, everyone with the financial ability to purchase land is entitled to own land in the county or town. In order to own land, individuals must follow procedures including completing an application, and providing payment to the County Authority. Furthermore, a number of fees must be paid, including an application fee (15 SSP), and a processing fee (45 SSP) upon submission of the application. If the application is successful, the applicant is required to pay for the plot allocated. The price is determined based on the class of the land.<sup>39</sup>

Despite these systems, the study revealed that the process of land allocation in practice is not transparent and dogged with corruption. As one respondent asserted:

“Those allocated land by the authority upon application would have their names listed on the board. So if someone was lucky they would be taken by the survey people and have their portion of land demarcated for them and subsequently make payment to have legal title or lease to the land.

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<sup>38</sup> Interview with Payam Administrator on 23 June 2011 in Yambio.

<sup>39</sup>At the time of the study, information on the pricing on the different categories of land was not available. The general perception by the people interviewed was that the price was expensive and beyond the reach of women and the vulnerable. It was also perceived to be expensive to ordinary citizens in South Sudan.

Unfortunately this process was not transparent and therefore not favorable to the less fortunate such as women and other vulnerable group”.<sup>40</sup>

The same sentiments were echoed by youth and women interviewed during the survey. In Juba, women reported applying for land in 2009, but as the time of the assessment in June 2011, they still had not received any official communication about their application:

“Women apply for land at County level or town but do not get land. The process is not transparent. I applied for land three years ago but I have not been given land. We do not understand why women are not allocated land yet men are given. I have been visiting the offices but am always told to check tomorrow. You get tired of this business of come tomorrow”.<sup>41</sup>

At the same time, respondents reported that men that had submitted applications at the same time as women have received parcels of land and were developing the plots while the women had yet to hear anything.<sup>42</sup>

This lack of transparency suggests that others factors may affect allocation. Vulnerable individuals who wait without explanation therefore become frustrated by the process and believe that nepotism and cronyism are enabling others with greater social status to purchase land while they are unable.

For youths, an additional hurdle limiting their access to land is age discrimination, as only those of a certain age are allocated land.<sup>43</sup> A father can give his son land only at the time of marriage; the land is given to enable him to settle with his wife, thus excluding unmarried youths from the possibility of accessing land through this channel.

Overall, these issues in the land allocation process result in unequal access to land for the vulnerable group. This creates an immediate barrier to their economic bargaining power, and prevents them from accessing and engaging in meaningful developmental activities to improve their livelihoods. This cross-cutting issue, together with limited educational opportunities is thus directly linked to additional issues of limited livelihood opportunities, food insecurity, and poverty, discussed further below.

### **4.3.2 Challenges in Implementation of Legal Protections**

As discussed previously, the Constitution and the Land Act of 2009 have promising opportunities for vulnerable groups in terms the rights to access and own land, access decent housing, and protection from eviction. However, people interviewed at the community level had reservations about the realization of these rights as envisaged: “Women will not get land even with the new Constitution in place. One of the government officials took our portion of land without consultation or compensation. We went to court but we did not get any help. The commissioner in the area said his hand was tied as the matter was in court and therefore we should wait for the court’s decision”.<sup>44</sup>

Similarly, others said, “The new constitution will take time to implement to confer rights to women because our culture is rigid. Our traditions and customs are applied by the traditional courts officials to the letter and

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<sup>40</sup> Interview with a respondent on 29 June 2011 in Juba where he discussed concerns about the process of land allocation in South Sudan at the County level. He said land allocation is not based on merit but on cronyism and connections.

<sup>41</sup> Interview with a member and official of the Women’s Union on 1 July 2011, Juba.

<sup>42</sup> Interview on 1 July 2011 with the Official of Central Equatoria General Women’s Association in Juba.

<sup>43</sup> Interview with youth respondents on 21 June 2011 in Terekeka revealed that there is a filter questionnaire which everyone is expected to fill in to facilitate the application process. The questionnaire includes a question of age, and it was reported that where the officials notice the age of the applicant and deem it young, they do not process the application. Many youths reported applying for land at the county level since 2010, but had not received any response at the time of the interview.

<sup>44</sup> Interview on 23 June 2011 with members of the Women Resource Centre in Yambio.

the community leaders will not accept daughters to inherit land there will be need for a concerted effort to sensitize the community to change their mindset<sup>45</sup>.

In addition, and as highlighted earlier, the recognition within the Constitution and the Land Act of the rights of communities to adhere to traditional practices and customary practices create a challenge for the implementation of provisions guaranteeing land rights to the vulnerable.

### **4.3.3 Government Appropriation**

As clearly laid out in the Constitution, all land in South Sudan belongs to the people. At the same time, land is managed on behalf of the people by the government. However, there have been perceptions among communities that since the land belongs to the people, the government should have no role in managing it. This discrepancy in understanding has led to conflicts between community members and government authorities, particularly in recent times, when authorities have allocated community land for economic development with limited consultation or compensation. This has been the case in areas where the government seeks to establish urban areas or business ventures. In such instances, people have typically been evicted from the land, often from slum settlements, to pave way for development. The government has generally not provided an alternative place for resettlement.

### **4.3.4 Demolition of Slum Structures**

Particularly in urban centers, slum communities and shanty business areas are common. In these areas, vulnerable groups, including many women, have established small business in tents and shanty structures that are subject to demolition without notice.<sup>46</sup> In many cases, these small businesses are the only available source of livelihood, and following demolition, the women are left even more vulnerable. In the words of an official of one of the youth associations in Juba: “The government of South Sudan has not been kind to the women, the little shanties they have in the market for business have been destroyed/ demolished by government or their proxy without notice or compensation. So where do the women get the economic power once the tukuls are destroyed?”<sup>47</sup>

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<sup>45</sup> This was a common statement by both men and women interviewed. They were all of the opinion that the constitution may confer rights to the categories of the vulnerable groups but the challenge lies with its implementation. While they said that in town, daughters and women can inherit land from parents or husband, at the community-level they expected there to be resistance to such attempts.

<sup>46</sup> Interview on 1 July 2011 with the Chairperson of the Women’s Union, Juba.

<sup>47</sup> Interview on 30 June 2011 with an Official of Sudan Youth Christian Ministry International, Juba.

# 5. CONCLUSION AND RECOMMENDATIONS

## 5.1 CONCLUSIONS

It is evident that land is a key resource for all people in South Sudan, because of the close link between land and livelihoods. This assessment revealed that despite legal protections, women, youth, demobilized soldiers, returnees and internally displaced persons are largely disadvantaged in terms of accessing or acquiring land in South Sudan. A variety of factors affecting access to land, including socio-economic status, insecurity (both historic and modern), and government policies and practices, have aggravated vulnerability among already disenfranchised groups.

As a result of this, youth, women, IDPs, returnees, and demobilized soldiers are disgruntled, believing that the government is not meeting their needs, or worse, is discriminating against them. This dynamic may pose a threat to security and peace within South Sudan if the government does not address the issues raised by these vulnerable groups in a substantive way. Because of the unique importance of land access for these groups and for people in South Sudan in general, it is essential that the current land reform agenda and development process include and address the needs and concerns of the most vulnerable.

The assessment also revealed that the customary land tenure system, which remains relevant even within the statutory system, has affected women disproportionately in terms of limiting their access, control, and ownership of land by virtue of their gender. Women generally do not own or inherit land in South Sudan. They typically access land only through their husbands, and may lose this access if widowed, leaving them particularly vulnerable. The insecure position women hold within the land tenure system has serious adverse implications for women's ability to be economically empowered. To rectify this, the tenure system needs an overhaul to recognize women's rights, needs, and concerns. To achieve this, the government and other stakeholders including customary chiefs and community elders will need to work together to find a way to harmonize the statutory laws and principles with customary practices.

## 5.2 RECOMMENDATIONS TO THE GOVERNMENT OF SOUTH SUDAN

Dealing with land issues affecting the vulnerable group requires multifaceted strategies and a concerted effort by all stakeholders. The testimonies of respondents interviewed in this survey attest to this. While the vulnerable face many similar challenges, they are not a homogenous group. Particular vulnerable groups have their own unique and distinct issues, which cannot fit in one pyramid. The state, civil society and development partners must work hand-in-hand to share strategies and leverage resources in order to establish a strong foundation upon which land issues can be addressed in a fair, transparent, and mutually productive way. In line with this, SRLGP recommends the following to the Government of South Sudan:

### 5.2.1 Ensure Women's Participation in Decision-Making and Governance Structures

The 2009 Land Act requires creation of County Land Authorities responsible for decision-making in county-level issues related to land. Under section 45, the Land Act provides for one slot in each Authority to be allocated to a woman. According sections 47 and 48, Payam Land Council are to be established with the same quota. These provisions do not meet the threshold envisaged in the Constitution of South Sudan, that 25% of

seats in government bodies be filled by women. As a first step to addressing the grievances of women regarding land tenure, women must be enabled to participate in and take on a more active role as designers, planners, implementers, and evaluators in the land question in South Sudan. In order to enable this, the following is recommended:

- Increase women’s representation within land administration institutions, including titling and registration agencies, as well as village councils, in line with the threshold established by the Constitution (25%);
- Sensitize land courts, the media, and decentralized government authorities about women’s land rights and their equal standing before the law;
- Review whether further affirmative action policies may be required to counteract the effect of discriminatory social norms and practices.

## **5.2.2 Reform the Legislative Framework Governing Land Tenure**

Examination of existing laws, such as the Transitional Constitution and the Land Act of 2009, reveals that there is a gap in the legislation in addressing the land rights of the vulnerable group. While the Transitional Constitution has a comprehensive bill of rights, there are subrogation clauses that hinder the implementation or enforcement of the rights. For instance, section 5 of the Transitional Constitution spells out the sources of legislation in South Sudan, and “customs and traditions” are included as one of the sources. During the field visits, many people identified culture and traditions as a major impediment to women’s advancement and a roadblock to effective implementation of the constitution itself. There is therefore a clear need to explicitly address the contradictions between culture and statutory law through legislative reforms. The Constitution should make clear that while recognized as important, cultural norms shall not be used to deny the realization or enjoyment of rights enumerated in the constitution.

When it comes to the issue of succession and inheritance, there is currently no legislation to help operationalize section 16 (5) of the Constitution, which provides for women’s right to own property and share in the estate of deceased husbands (together with any surviving heir of the deceased). The provision is ambiguous and does not explicitly provide for daughters’ rights in the estate of a deceased father. The Parliament should therefore develop legislation on Succession and Inheritance to address this gap and clarify the law. This Act should deal comprehensively with issues of succession and inheritance, and clearly define the beneficiaries, taking in mind past discrimination against women. Of particular importance is the inclusion of specific clauses in the legislation that would allow daughters to inherit from their parents, and for wives to manage the conjugal property and land, as well as other property, of her deceased husband. At present, customary law alone deals with succession and inheritance and does not protect women, particularly unmarried and widowed women.<sup>48</sup> It is therefore important that legal reform in this domain happen simultaneously with land reform initiatives and information campaigns throughout the country.

There is a similar need to reform the Land Act of 2009, which also imports cultural land rights and provides that land rights under customary tenure shall be an assured security.<sup>49</sup> There is need to modify this section to ensure that people previously excluded by culture from accessing, inheriting or controlling land are properly integrated.

Women’s land rights are particularly provided for under section 13(4) of the Land Act, which provides that women shall have the right to own and inherit land together with any surviving legal heirs of the deceased in line with the Constitution. While a good start, this provision is wanting in that it has not provided a definition

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<sup>48</sup> Interview on 30 June 2011 with a Program Officer from the Sudan Law Society Association, where he expressed his concerns about how culture and traditions are hindering the ability of women to share in the estate of their deceased husbands or fathers, because there is no statutory framework to deal with issues of succession and inheritance. He also strongly recommended legal reform to deal with these issues.

<sup>49</sup> See sections 8(3) and (4) of the Land Act (2009), which not only provides for customary tenure but protects those who hold rights in land under that tenure.

of surviving heirs. The section must therefore be modified to provide clear definition on surviving heirs to avoid ambiguity.

### **5.2.3 Support Formalization of Land Tenure at Community Level**

The process of formalization of land ownership and tenure is still ongoing in South Sudan, as previously, land was not officially demarcated. Very few people hold legal titles, and at community level, titles are nonexistent. Generally, people do not know the acreage of their land or its official boundaries. Traditional land authorities have knowledge of land boundaries, but the lack of clear, written records has contributed to intra-community tensions in some areas, where clans claim conflicting boundaries. To improve security of tenure, parceling should be done and interest entered into the official land register.

The national government (Juba-level) should support piloting of such a process in identified communities. The community should lead the process with close support from local government. Civil society and development partners may be involved, as assistance will be needed to undertake the process through financial and technical support.

During the planning, design, and implementation of pilot procedures to begin the formalization of land ownership, the interests and concerns of youth, returnees, IDPs, demobilized soldiers, and women should be explicitly considered and integrated, to ensure that they are included. Furthermore, these vulnerable individuals should be equally eligible to receive shares in newly parceled plots from the beginning. To ensure this, while traditional approaches remain relevant, the distribution process should be designed in a democratic and transparent way that ensures that the process is inclusive and equally open to all.

### **5.2.4 Support Mandatory Joint Titling for Married Couples**

An additional recommendation is for the government to mandate co-titling of land for spouses. The period while the process of land ownership formalization is being developed presents a good opportunity to introduce co-ownership or joint titling for spouses. The practice of joint titling, where land owned by a married couple is registered in both spouses names, would safeguard women's rights to land and in the event of death, separation, or divorce. Joint titling should be made mandatory for legally married couples through specific legislations. This idea is working in some countries, such as Viet Nam,<sup>50</sup> where the marriage and family laws were revised and now require joint titling for land and other family assets. The same has happened in Rwanda, where the law of Matrimonial Regimes, Succession and Liberalities now requires couples registering for marriage to make a joint commitment to a choice of options for the shared ownership and disposition of marital property.<sup>51</sup>

### **5.2.5 Ratify International Conventions on the Rights of the Vulnerable**

South Sudan is the most recent country to have joined the UN as a member country. The government has thus signaled that it is striving to join global and regional bodies that deal with political, social, cultural, and economic rights like the UN and the African Union. It is imperative that the government ratifies international instruments that protect women, youth, the internally displaced, returnees, and demobilized soldiers, beginning with the relevant UN conventions.<sup>52</sup>

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<sup>50</sup> See C. Grown, G. Rao, and G. A. Kes, "Taking Action Achieving Gender Equality and Empowering Women" (London: UN Millennium Project, Task Force on Education and Gender Equality: 2003): 58-87.

<sup>51</sup> Ibid.

<sup>52</sup> The international and regional instruments envisaged here include: Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), International Convention Civil and Political Rights, International Convention on Economic, Social and Cultural Rights, and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women, African Declaration on the Internally Displaced Persons, among others.



## 5.3 RECOMMENDATIONS TO CIVIL SOCIETY AND DEVELOPMENT PARTNERS

Furthermore, SRLG project recommends the following to civil society and international development partners, including international organizations, non-governmental organizations, and donors, together with government:

### 5.3.1 Conduct Public Awareness and Outreach Campaigns

The study highlighted the challenges created by lack of education and knowledge about relevant issues. Furthermore, there is a clear need for greater public discourse on the challenges facing women and vulnerable groups, and how these issues are related to customary practices.

During field interviews, most men and women were not aware of the rights of women in accessing land. Beyond this, however, where men and women were aware they were often quick to claim that culture and traditions should override any legal provisions, suggesting that people of South Sudan would prefer to be guided in these matters by customs rather than law. Many female respondents reported that implementation of legal rights for women is impossible because of cultural and patriarchal traditions that lead many to believe that “new” rights for women are a dangerous deviation. For example, one educated respondent said the following in regards to why women should not own land:

“The new constitution contradicts our culture. People believe that culture protects women, so to give daughters land will be extremely difficult among the Dinka. It does not make sense. It is fine for a wife to inherit her husband’s land but not daughters. If daughters are given land it will cause disharmony in their marriages (we must protect marriages). Giving daughters land is negative because it is going to destroy marriages for the girls they will believe that they can always abandon their husbands because they are fully catered for by their parents. We need to rethink the strategy.”<sup>53</sup>

Such sentiment must be included and addressed in the public discourse about gender and land rights. Public education and awareness campaigns would be beneficial in increasing knowledge about the adverse consequences women face when prevented from accessing land. This could help to initiate discussion on the issue and could then also highlight the laws or policies that guarantee the rights of women (as well as other vulnerable groups). For example, the specific provisions of the Constitution and Land Act guaranteeing all the right to own land should be publicized.

High illiteracy rates throughout South Sudan, but particularly among women, require alternative outreach methods for public awareness raising. The use of theatre for sensitizing communities about women’s rights to land would be effective, as it will engage all community members, regardless of education levels, and educate them in an entertaining way about the challenges women face. Theatrical events can also be used to facilitate community discussions on how women’s rights to land can be protected. This strategy has worked effectively in Tanzania, where theatre and moot courts undertaken by students and other social groups were televised or staged in public places to enhance public knowledge on women’s property and inheritance rights.<sup>54</sup> These public outreach activities ultimately resulted in changes to laws to protect women’s rights and greater knowledge on the rights of women in relation to property, inheritance, and land administration.

The media also plays a pivotal role in shaping public opinions and perceptions about issues that concern society. As regards women specifically, the media has been a very significant mediator in the public

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<sup>53</sup> Interview on 29 June 2011 with a male respondent in Juba, who was categorical that daughters must not inherit land.

<sup>54</sup> An impact assessment on women’s property rights in Tanzania and Kenya by ARD/USAID in July/September 2007 revealed that radio was the most efficient mode of passing messages to communities at the local level on women’s property and inheritance rights. Through these, positive changes were experienced in Tanzania and Kenya. In Tanzania, it had an impact of women’s rights to inherit property from parents through changes legislation in land. In Kenya, ECWD conducted civic education and legal rights awareness in Rift Valley Province focusing on the North Rift that had positive changes for women.

perception of women and therefore there should be engagement with the media specifically to promote women's land rights as they are defined in the Constitution and Land Act.

Media outlets, particularly radio stations with broad reach, should develop short programs (twenty to twenty five minutes) each week, dedicated to raising awareness among the public about women's land rights as well as other human rights protected in the Constitution.

Again, while focusing on women's land rights these programs must also confront cultural issues that impede women's rights. The media can also be used in promoting leadership of women, including in mobilizing women to participate in land administration institutions and developing public confidence in women's leadership and support to women serving in such public institutions.

Messages conveyed to the public through media and theatre should be packaged in a way that is not confrontational and does not attack cultural norms and practices. To this end, positive aspects of culture in respect to land ownership should be invoked to show the contrast to the obstacles facing women.

### **5.3.2 Conduct a Legal Literacy Campaign**

Beyond the need for general awareness raising and discussion, there is significant misunderstanding about legal rights related to land, particularly the rights of women, among the public. It is therefore particularly important to educate people on the law and its implications. Legal literacy campaigns will be beneficial in creating knowledge among the community members, particularly the vulnerable themselves, on the Constitutional and the Land Act provisions protecting the rights of the vulnerable. The aim of such a campaign would be to increase knowledge among women and other vulnerable groups about their rights, as well as to foster greater community understanding and support for the realization of those rights.

Civil society and development partners, with government support, should organize seminars and workshops in communities focusing on legal knowledge development. The sessions should target women and other vulnerable populations and be structured to equip them with practical legal knowledge on their rights related to land, mechanisms for effectively claiming those rights, and recourse in the event of violations.

Although focused on participation of the vulnerable, community elders and chiefs should also be engaged in the seminars in order to develop increased support among these key figures. These traditional leaders should be at the forefront of the legal education program, to ensure that they are fully aware of the provisions within the law, and can therefore be allies to vulnerable individuals within their communities. A similar process has been successful in Kenya, where the Luo Council of Elders has been involved in efforts to protect widows from disinheritance by their in-laws, resulting in drastic reduction of widow disinheritance in Nyanza province.<sup>55</sup>

### **5.3.3 Establish and Support the Work of Legal Aid and Resource Centers**

The lack of legal knowledge identified in the surveyed communities suggests that vulnerable individuals do not have access to legal support when they feel excluded or discriminated against. They have no place to go for advice or consultation on matters related to legal rights generally, and land rights specifically. This is not surprising, as civil society in South Sudan is weak and in many ways limited to Juba. Lack of legal aid or resource centers is an impediment to the community. For legal education campaigns to be effective, legal aid or resource centers are needed to provide support to vulnerable populations seeking to realize their rights or report violations. It will be important to establish centers where people can easily access them and seek legal advice at minimal costs. As a first step, development partners and existing civil society should conduct community needs assessments to determine exact needs and priorities.

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<sup>55</sup> Nyong'o, Dorothy and Otuma Ongalo. From Despair to Hope: Women's Right to Own and Inherit Property. USAID POLICY Project, Futures Group International and Kenya National Commission on Human Rights, 2005



### **5.3.4 Cultivate Active Participation of Communities in Land Law Reform Initiatives**

Any solution to land issues affecting the most vulnerable must be done in consultation with the members of the broader communities in South Sudan. Without community involvement in general, land reform initiatives will struggle to have effect. Furthermore, in some cases, vulnerable populations struggle because of tense dynamics, misunderstandings, and mistrust between them and their broader communities. Efforts must be taken to ensure that these vulnerable populations are integrated into their communities, and that all members of the community are then included in discussions and initiatives related to land reform. To this end:

- Civil society and development partners, with support from government, must work closely with communities to ensure broad inclusion of vulnerable groups, such as returnees, IDPs, or demobilized soldiers, who often face challenges in fully reintegrating into their communities;
- Civil society and development partners, with support from government, should further work together with community leaders and other community representatives to discuss the specific challenges faced by the vulnerable with regards to land and livelihoods access, and work collaboratively to develop solutions acceptable to all parties; Such an approach will cultivate acceptance of the initiated land reforms at local level, as local communities will own the reform process and feel more invested in its success.
- Community leaders should acknowledge the legal and human rights of women, and encourage recognition that culture and tradition should not be leveraged to prevent women from exercising rights conferred under the Constitution and other legal frameworks. This is specifically applicable on issues related to the right of women to inherit and own land.

### **5.3.5 Involve Men in Developing Solutions**

The exclusion of women and other vulnerable groups from land ownership is a function of the patriarchal system in South Sudan in which men dominate. Land is a critical resource and provides a power base for control. As nearly 75% of land in South Sudan is customary land, customary law guides most transactions, and men are the custodians of the system. Ensuring women's access to land as envisaged in the new Constitution and Land Act of 2009 thus requires support from men in South Sudan.

Civil society should work to gain public affirmation by men in key positions, including those in public office and community leaders, of women's rights. Furthermore, public awareness campaigns to encourage fathers to categorically provide their daughters with shares of land, and similarly encourage husbands to publicly promise their assets to their wife and children. Men must also be encouraged to speak out against practices such as widow disinheritance by in-laws. This is already happening in some places and during field visits, some men within the traditional court reported registering land in the names of both their sons and daughters without discrimination.

It is important to involve men in outreach as well as reform initiatives, to ensure their buy-in and support. It will be useful to identify men among the professional and political class who support increased women's rights and can pass this message on to other men in the community. Demonstrating that men can support such changes in customary practices, such as guaranteeing one's widow the right to continue accessing family land, without losing respect and honor in the community is important.

### **5.3.6 Support Economic Empowerment of Vulnerable Populations**

During the assessment, it was clear that vulnerable groups in South Sudan are disempowered economically. While measures related to protecting land tenure for these groups will support the improvement of their economic situation, there is a need for government and civil society to collaborate on broader activities that will economically empower the vulnerable. One step towards this end would be the roll out of programs for economic empowerment through the Ministry of Gender, Child, and Social Welfare and supported by World Bank, which are currently concentrated in Juba and its environs.

Through improved access to land, vulnerable groups will have a powerful tool for fighting hunger and poverty. The capacities of the vulnerable should be built through training programs to provide the necessary skills in land use to help them maximize their productive capabilities in a sustainable way. Agricultural training programs, focused on improved agricultural techniques and skills, and support for procurement of needed inputs, including improved seeds and tools should be supported for all vulnerable groups. Inclusion of women is particularly important, given the responsibilities that women typically have for farming and cultivation activities at the household level.

Another strategy would be increasing or improving access to other productive resources like micro- credit facilities, technological and extension services, and markets for produce. This strategy is already being pursued among women and demobilized female soldiers, but at limited levels, by the women's union in Juba. Women are trained on life skills and trades, and then sell goods on the market. The proceeds are then shared among the group members, with some reserved to help sustain their work. Government or other non-governmental organizations should support such groups. Groups and associations could also be supported to access funding or micro-credit facilities in order to support more commercial agriculture aimed at reaching a wider market.

Related to support for economic empowerment of vulnerable groups, it is important that civil society continue to advocate for government to speed up processes that ensure that IDPs and returnees that are unable to access their original lands after displacement are considered for resettlement in urban areas. These groups should then be supported with capacity-building programs focused on alternative, urban-appropriate livelihoods.

## **5.4 RECOMMENDATIONS SPECIFIC TO THE SRLG PROJECT**

### **5.4.1 Support Government Legal Reform**

The SRLG can support the process of legislative reform related to statutory land tenure. As explained, the Constitution and Land Act both require modification in order to clarify the rights of women. Additional legislation, such as a bill on succession and inheritance, is also needed to complement existing legislation. The project can engage the government and civil society through focused advocacy and lobbying for the revision and development of such existing and new legislation related to land tenure.

Legal reform is a long and difficult process, since many people have vested interests. The project should therefore approach this through strategic alliances with relevant partners. The SSLC and the Ministry of Justice and Constitutional Affairs will be useful partners for high-level advocacy for legal reform and policy influencing at the national level. The project must also cultivate a working relationship with civil society in order to mobilize support for reform initiatives at the grassroots level.

As part of its advocacy, the project can also work with government to ensure that the process of land registration and land use planning adequately integrates the vulnerable in the future.

### **5.4.2 Support for Legal Education Campaigns**

The SRLG project should identify partners that provide legal education to collaborate with on the issue of legal literacy and public awareness. For instance, the Sudan Law Society Association (SLSA), a national organization based in Juba, has sub-units in other states and provides legal education in South Sudan. The project could liaise with SLSA and develop activities including legal education programs and legal information dissemination in pilot areas. A strategy should be jointly developed with identified partners like SLSA.

The project may choose to work with religious institutions as platforms for legal awareness raising on issues of land, inheritance, and succession, as the institutions have large constituents and influence. Supportive religious institutions would be useful conduits for campaigns for attitudinal change towards women's land rights, as well as those of other vulnerable groups. Similarly, chiefs and community leaders will be important

allies in such a campaign, as their communal meetings could also be used as forums to disseminate information.

Additionally, SRLG could support efforts to build the capacity of women, youth, returnees, and demobilized soldiers to understand their rights and engage in advocacy at local and national level. This will require finding entry points to each group, ideally with existing organisations that work within them, to provide legal, leadership, and practical skills training. It will also be imperative to provide forums where vulnerable individuals can publicly articulate their opinions and aspirations. The project, in conjunction with the relevant stakeholders, could help to create or support such forums. This should be done with cultural respect and sensitivity.

### **5.4.3 Support for Community Legal Aid**

Legal aid at the community-level is also needed to provide resources and support to vulnerable individuals seeking to realize their rights. Development of a community legal aid base could be undertaken through structured workshops organized by an SRLG-supported partner. In such a strategy, a target group should be identified based on education levels and standing in their community to be trained as trainers at the community-level. The workshops could be done in phases, with up to three or four phases at different intervals. This would create a pool of people who understand the legal landscape that can then be used as “paralegals” within the community. This has worked in South Africa, where paralegals have been trained and are useful in giving community legal advice or information on what to do and where to go in case of a violation. They also link community members to lawyers or institutions of administration of justice when needed. The paralegals come from and live within their communities, and thus if properly trained can act as good ambassadors for women and other vulnerable groups. In Kenya the paralegal system has also taken root, with trained paralegals available to provide basic legal advice to community members and monitor human rights violations.<sup>56</sup> The SRLG project could employ a land law specialist to work with partner organizations on how a similar model could be supported or modified for South Sudan context.

Paralegals will be a first line of support at the community levels. However, as many cases will require greater expertise, legal aid provided by legal practitioners (advocates) should also be supported. The SRLG project could partner with Sudan Law Society Association or other legal associations to provide legal aid to vulnerable community members and assist with cases related to land rights involving the vulnerable group. This has financial implications and specific agreements would have to be determined with selected partners.

### **5.4.4 Support Improvements to Land Administration System at Local Level**

At the SLRG project sites, improved land inventory and administration systems should be piloted. In Yambio, for example, in order to develop a local land inventory system, there is a need to have gender-disaggregated data on who has access to, control of, and ownership of land in the land register. This is important in assessing how far the spirit and the letter of the Transitional Constitution and Land Act are implemented at the grassroots level. The SLRG could support the process of collecting and analyzing such data.

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<sup>56</sup>See Baseline Survey on Status of Legal Aid Services Provision in Kenya, a Publication of National Legal Aid and Awareness Programme (2011 forthcoming), in which the writer of this report was involved. The survey highlights the success of the paralegal model, where trained paralegals make a difference in legal information dissemination and are useful in providing basic advice to community members faced with legal problems. They empower the community with information in the absence of lawyers at no cost and link the community to the lawyers if the problem requires the technical and professional intervention of a lawyer. Similarly, South Africa has successfully utilized a model of community legal aid based on legal aid resource centers that train selected community members to become paralegals. South Sudan could emulate this, particularly since there are few lawyers and most are concentrated in Juba. The distance between other states and the capital is a challenge for those who need legal support.

#### **5.4.5 Establish Strong Partnerships with Local Communities**

SLRG should establish strong partnerships with local communities in the pilot sites selected for the project. Experience from other projects like Tetra Tech ARD PROMARA in Kenya reveals that activities or programmes undertaken by any project or institution can only succeed if there is a good entry point into the local community that succeeds in winning trust and good will.<sup>57</sup> Working with the chiefs and community elders in the selected pilot areas of the project will be the starting point for gaining this much needed entry point. In order to successfully achieve local acceptance, project staff should be well versed in the local norms and treat the community with respect.

The role of chiefs in changing the status quo cannot be understated. They are considered as custodians of the culture and customs of the community. They are also opinion-shapers, and thus their blessing is vital for the project to gain acceptance from the community. Therefore, working closely with chiefs would help in bringing about the social change.

Any advocacy for land reform should follow a two-pronged strategy: community-based advocacy and advocacy focused on policy-makers. The community-based advocacy strategy must focus on building a constituency at the community-level that identifies with the problem of land rights for vulnerable groups and garners their support to advocate for policy changes from the grassroots level up to the government. This constituency should ultimately act as the pressure group to encourage government authorities to address the issues. The SLRG can support the community-level advocacy and mobilization to this end.

The project can then engage in high-level advocacy with policy-makers in South Sudan, using information and evidence from the community and in line with community-led demands and locally identified solutions.

#### **5.4.6 Promote Representation of Women and Vulnerable Groups in Land Governance Structures**

As noted, it is important that women and other vulnerable groups are sufficiently represented in institutions and structures of governance that deal with and make decisions about land at all levels. This includes increasing women's representation within land administration institutions, such as titling and registration agencies, as well as village councils, to meet the 25% threshold established in the Transitional Constitution.

The SLRG should advocate for such inclusion, and conduct outreach campaigns at community and policy-maker level to cultivate a culture of inclusiveness in decision-making. This should be prioritized at the SLRG project pilot sites.

#### **5.4.7 Promote Incorporation of a Gender and Vulnerability Perspective in Land Administration**

The SRLG should establish procedures for incorporating a gender and vulnerability perspective in planning, monitoring and evaluating land allocation, land use, and land planning in the project pilot areas. In the future, SRLG should promote rolling out such measures throughout South Sudan, alongside government land reform initiatives.

The Project should be focused on recommending and supporting implementation of policies that aim at the realization of equal rights for all vulnerable groups in land administration, planning, use, and ownership. An important first step in this is fostering commitment at all levels for the integration of gender concerns into policy and program development. Public outreach campaigns and government advocacy recommended above will feed into this process.

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<sup>57</sup> The Tetra Tech ARD PROMARA project, an initiative of USAID Kenya, has received support from the community around the Mau Forest because it involved the community at the time of planning and designing of the project, and found an entry point for working with community to identify issues and solutions to Mau conservation issues.

#### **5.4.8 Collaborate with and Support Women's Groups and Other Local Organizations**

As part of efforts to empower women and other vulnerable groups, the project should support local groups involved in economic empowerment activities. For example, women's groups are encouraged because as vulnerable groups such as women become organized, they can mount pressure through collective actions and increase local advocacy on government and policy-makers.

Currently, there is little support, both in terms of training and credit facilities, given to women's groups in the pilot areas. In Yambio, the members of Women Resource Center receive support from World Vision, and the area assistant chief in Yambio indicated that UNMIS is providing small credit facilities to small groups engaged in poultry keeping, handicraft and farming activities. Members of such groups would benefit from livelihoods training, as well as support for networking, building alliances, and advocacy. In the past, the Evangelical Church of Sudan provided training to women in West Equatoria State and NPA is currently doing gender training at a number of sites. The SRLG project could liaise with these organizations to determine gaps and support complementary activities that avoid duplication.

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## **LEGISLATION**

The Interim Constitution of South Sudan, 2005

The Transitional Constitution of South Sudan, 2011

The Local Government Act, 2009

The Land Act, 2009

# ANNEX B: IMPLEMENTATION PLAN\*

\*This section presents activities and indication of what needs to be in the implementation plan. This report needs to be validated by the relevant stakeholders who will then come up with a contextualized implementation plan. This substantive plan as mapped out with the relevant stakeholders will set the platform for the implementation plan. To facilitate this process, the project can engage the services of a local consultant to develop a comprehensive implementation plan informed by the findings of the study as well as the strategies identified specifically for the project to pursue. This is only a model for guidance for the project and needs follow up.

S/NO.	ACTION	ACTORS	STRATEGIES	TIME FRAME
1	Formation of National Task force	TT ARD/USAID reps, Women representative, DDR Representatives, IDPs, Returnees	Holding National Workshops with stakeholders	December 2011
2	Launching and conducting legal literacy programs on Land rights and sustained sensitization	SSLC, NGOs, Women activists, lobby groups, cultural institutions Grassroots	Developing training materials, capacity building activities, establishment and strengthening of legal aid centers, holding public forums, involving women, men, youth, demobilized soldiers, and returnees, using print media, popular theatre	Immediate and ongoing
3	Lobby for amendment or enactment of gender sensitive land laws	Lobby groups, relevant government departments, SSLC, professional bodies, NGOs, women's association, legislators	Networking, building alliances, targeting the judiciary, harmonize existing laws/policies, develop IEC materials Sensitization, public dialogue, media	Immediate and ongoing



			campaigns	
4	Defend Land rights for the vulnerable group	Legal aid centers, NGOs, relevant government departments	Litigation, legal aid, promote and build capacity for grassroots and community based groups	Immediate and ongoing
5	Formulate, operationalize, implement existing positive laws, policies and customary practices	Relevant government department, SSLC, national task force, legislators, legal aid centers NGOs	Networking, media campaign, putting place structures, review of customary practices, simplify laws and procedures Inventory of existing laws and policies to identify between legislation and practice	Immediate and ongoing
6	Research and documentation on women/vulnerable group experiences on land and the relationship to economic development and their livelihoods	The national task force to assign individual experts, women's NGOs, institutions dealing with research and documentation	Make inventory of existing research to identify gaps, studies on women's land rights, demobilized soldiers, IDPs and disseminate research findings at all levels	Immediate and ongoing
7	Lobby to increase women's representation on Land Authorities and other related bodies to 25%	Lobby groups, women activists, NGOs, CBOs, legislators, relevant government departments, community structures	Networking, media campaigns, public education and awareness campaigns,	Immediate and ongoing
8	Promotion of girl child education and adult literacy	Women's lobby groups, NGOs, relevant government departments, local government,	National campaigns for girls education and adult literacy,	Immediate and ongoing

# ANNEX C: SCOPE OF WORK: GENDER AND VULNERABLE GROUP SPECIALIST

The Gender and Vulnerable group will review the draft SRLG inception report and make recommendations on where to incorporate interventions targeted at women and vulnerable groups. She will also draft a G&VG strategy separate from the inception report, identifying potential actions the project may take to address these concerns.

## **SPECIFIC TASKS**

1. Meet with the SRLG technical team to discuss potential G&VG interventions
2. Share insights and ideas regarding incorporation of G&VG interventions, based on experiences other projects;
3. Provide recommendations on tasks targeted at benefiting G&VG populations, and where to include them in the inception report;
4. Review and incorporate international norms, conventions, and practices concerning interventions targeted at women and other vulnerable groups.
5. Consult key government ministries, civil society, and development partners implementing gender, IDP, refugee and other vulnerable groups-related projects in South Sudan so as to identify linkages and potential collaboration.
6. Draft the SRLG G&VG strategy, including an implementation plan.

## **DELIVERABLES**

1. Recommendations on how to include G&VG interventions into the SRLG inception report.
2. Draft of G&VG Strategy for the SRLG project.

# ANNEX D: ITINERARY

The following are the dates and places visited during the fieldwork:

16 <sup>th</sup> June 2011	Juba 1. The South Sudan Land Commission Office 2. Norwegian People's Aid
17 <sup>th</sup> June 2011	Ministry of Legal and Constitutional Affairs; Office of Director, Legislations & Gazette Notice Publication
21 <sup>st</sup> June 2011	Terekeka County 1. Executive Director Terekeka County 2. South Sudan Humanitarian & Rehabilitation Commission 3. St. Teresa Parish 4. Mundari Youth Ass. For Reconstruction and Dev. 5. Town Court Judiciary
22 <sup>nd</sup> June 2011	Group Meeting, Women Self Help Group (41 women)
23 <sup>rd</sup> June 2011	Yambio County 1. Payam Administration Office 2. Women Resource Centre (a group of 8 women and 1male)
24 <sup>th</sup> June 2011	Group Meeting 1. Vocational Training Center IDP Camp (80 IDPs) 2. Sub-Chief Yambio County (Female) 3. Evangelical Church of Sudan
27 <sup>th</sup> June 2011	Meeting at ARD office, Bishop Peter Munde Yacob Town, Business Ladies
28 <sup>th</sup> June 2011	Juba 1. Jonglei State Coordination Office Juba 2. Ministry of Gender, Child & Social Dev. Office of the Under Secretary Office 3. Aim for Independent Media
29 <sup>th</sup> June 2011	Juba 1. Sudan Christian Youth Ministries International 2. John Pen 3. Sudan Law Society Association
30 <sup>th</sup> June 2010	Director General Gender and Child Welfare; Telephone interview with Chairperson Land and Investment Commission Jonglei State
1 <sup>st</sup> July 2011	Central Equatoria General Women Association; ARD Technical Team

# ANNEX E: LIST OF ORGANISATIONS VISITED

1. The South Sudan Land Commission Office, Juba
2. Norwegian People's Aid
3. Ministry of Legal and Constitutional Affairs
4. Office of Executive Director Terekeka County
5. South Sudan Humanitarian & Rehabilitation Commission
6. St. Teresa Catholic Parish
7. Mundari Youth Association for Reconstruction and Development
8. Town Court Judiciary
9. Women Self Help Group
10. Payam Administration Office, Yambio
11. Women Resource Centre
12. Vocational Training Center IDP Camp (IDPs)
13. Sub Chief Yambio County
14. Evangelical Church of Sudan
15. Jonglei State Coordination Office Juba
16. Ministry of Gender, Child & Social Dev. Office of the Under Secretary Office
17. Aim for Independent Media
18. Sudan Christian Youth Ministries International
19. Sudan Law Society Association
20. Director General Gender and Child Welfare
21. Land and Investment Commission Jonglei State
22. Central Equatoria General Women Association

**U.S. Agency for International Development/South Sudan**  
Juba, South Sudan